2019 IL App (1st) 162051-U

FIRST DIVISION
March 4, 2019

No. 1-16-2051

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 MC6 8215
	)	
JOAN MARTIN,	)	Honorable
	)	Maureen Leahy Delehanty,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We remand for a preliminary *Krankel* inquiry where the trial court failed to inquire into defendant's posttrial claim of ineffective assistance of counsel.

¶ 2 Following a bench trial, defendant Joan Martin was convicted of misdemeanor battery (720 ILCS 5/12-3(a)(2) (West 2014)) and sentenced to 18 months' of court supervision, with no conditions. On appeal, Ms. Martin contends that the trial court erred by failing to inquire into the factual basis of her posttrial claim of ineffective assistance of counsel, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We agree and remand this cause so that the trial court can conduct the required preliminary *Krankel* inquiry.

¶ 3 I. BACKGROUND

¶ 4 On November 5, 2015, Ms. Martin signed a jury waiver and the court admonished her regarding waiving that right. Ms. Martin indicated that she understood the admonishments and the case proceeded immediately to a bench trial.

¶ 5 The evidence at trial was that, on December 5, 2014, the victim, Linda Marsh, went to her mother's residence because her brother, Dr. Fredrick Ruhe, who was staying with their mother temporarily, informed her that their mother was gravely ill. When Ms. Marsh arrived at the residence, the defendant, Ms. Martin, who was Dr. Ruhe's longtime girlfriend, was sitting next to their mother.

¶ 6 Ms. Marsh's testimony was that she asked Ms. Martin to leave, and the two got into a verbal altercation. They stepped out of the bedroom and into the living room, where Ms. Martin became aggravated and started yelling at Ms. Marsh. Dr. Ruhe testified that he stepped in between the women to deescalate the situation, but they continued to argue. Both Dr. Ruhe and Ms. Marsh testified that Ms. Martin then reached around Dr. Ruhe and punched Ms. Marsh in the face. Ms. Marsh called the police, Ms. Martin was arrested, and Ms. Marsh signed a complaint against her for battery.

¶ 7 That night, Dr. Ruhe received a voicemail from Ms. Martin, which was published for the court. In the voicemail, Ms. Martin acknowledged that she had hit Ms. Marsh, but stated that Dr. Ruhe and Ms. Marsh had both pushed Ms. Martin down. Ms. Martin also said that she had punched Ms. Marsh because Ms. Marsh was "getting ready to swing" at her first.

¶ 8 Ms. Martin testified on her own behalf. She claimed that Ms. Marsh initiated the altercation. According to Ms. Martin, Ms. Marsh announced "I can't take this," when Ms. Martin was sitting by Ms. Marsh's mother, and then "came at" Ms. Martin, poked her in the chest, and

announced that Ms. Martin was not welcome in the house. Ms. Martin claimed that both Ms. Marsh and Dr. Ruhe pushed her down during the course of the argument and that she had injuries to her face, teeth, and spine as a result.

¶ 9 The court found Ms. Martin guilty of misdemeanor battery. In finding Ms. Martin guilty, the court relied on Dr. Ruhe's testimony and the voicemail left by Ms. Martin in which she admitted to punching Ms. Marsh.

¶ 10 Ms. Martin, through counsel, filed a motion for reconsideration or a new trial. One argument in that motion was that "counsel became aware of additional physical evidence which included video and/or audio featuring statements made by both Ms. Marsh and Dr. Ruhe admitting to initiating the physical confrontation that resulted in the case at bar," and such evidence could have impeached the State's witnesses and changed the outcome of the trial.

¶ 11 At the hearing on the motion, defense counsel argued that on the "newly discovered" audiotape, which was recorded shortly after the incident, Ms. Martin stated she was struck by Ms. Marsh and Dr. Ruhe, and Dr. Ruhe responded, "so what," and acknowledged that Ms. Martin had been hit. At the time of the hearing on the motion to reconsider, counsel said that she had the recording on a flash drive but did not have a copy for the State. She also said that she had just heard the recording recently and referenced some difficulty "getting that recording memorialized on some form of media."

¶ 12 The court denied the posttrial motion and noted that counsel had almost a year to produce the recording, yet still had not made it available at the time of the motion hearing. The court stated:

> "So I don't know if *** this is a smoking gun in the defense's case, but I find without a doubt that *** the defense counsel could have certainly worked harder to get

this information from when the case came in January 2015 to the date of—if it was such compelling evidence, to the final trial date set in November [2015].

* * *

Did you tender [the recording] to the State, because you don't even come to court with a piece of evidence that you're not ready to share. You're still not prepared with it. And so here we are now, all this time past for trial. You can't delay a case and not do anything on it for all that time and then use it as the basis of -- for a reconsider when the rulings go against you."

¶ 13 Following the court's denial of Ms. Martin's posttrial motion, the following colloquy ensued:

"[MS. MARTIN]: I would like to file a Marsden trial, Your Honor.

[THE COURT]: Pardon me?

[MS. MARTIN]: She had this evidence. I e-mailed it to her. I brought it to her. She said we didn't need it, that you were dumber than a box of rocks.

[DEFENSE COUNSEL]: No, I didn't.

[MS. MARTIN]: Yes, you did. She said you were not the sharpest knife in the drawer. She said—

[THE COURT]: All right [*sic*]. You probably don't want to embarrass her any further with that.

[MS. MARTIN]: I wanted a jury. I wanted a jury. She told me no. I wanted to bring a new lawyer. She wouldn't let me.

[THE COURT]: Well, you've got your avenues of redress on that and maybe you should—

[MS. MARTIN]: I've wanted this all. She had it. I had it the day of trial waiting for her to listen to it, and she would not even sit with me for two minutes to listen it to [*sic*]. And then my phone broke.

[DEFENSE COUNSEL]: That's not true.

[MS. MARTIN]: Yes, it is true. You know it, [counsel]. I've got e-mails to prove this.

[THE COURT]: Are we ready for trial or for sentencing?"

¶ 14 The court then sentenced Ms. Martin to 18 months' supervision, with no conditions.

¶ 15 II. JURISDICTION

¶ 16 Ms. Martin was sentenced on June 28, 2016, and filed a timely notice of appeal on July 14, 2016. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603 (eff. Feb. 6, 2013), 606 (eff. Dec. 11, 2014)).

¶ 17 III. ANALYSIS

¶ 18 On appeal, Ms. Martin contends that the trial court erred by failing to inquire into the factual basis of her claim of ineffective assistance of counsel pursuant to *Krankel*, 102 Ill. 2d 181. Ms. Martin argues that she adequately advised the court that her lawyer was ineffective for interfering with her right to a jury trial and failing to present the audio recording that was part of her posttrial motion for a new trial. She requests that we remand the case for the trial court to conduct a proper inquiry under the standard set forth in *Krankel*. The State responds that Ms. Martin's "outburst" was vague and insufficient to trigger a *Krankel* inquiry. The State also argues that any error in not making a *Krankel* inquiry was harmless because the court considered

Ms. Martin's claim about the audio recording. We find neither of these arguments persuasive.

¶ 19 Under *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court must inquire into the factual basis of her claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the defendant's claim indicates possible neglect by trial counsel, the trial court must appoint new counsel to argue the claim of ineffective assistance. *Id.* at 78. However, if the defendant's claim lacks merit or concerns solely trial strategy, then the court may deny the motion and need not appoint new counsel. *Id.*

¶ 20 Our supreme court recently resolved what it viewed as a conflict among the districts as to what is sufficient to trigger a *Krankel* inquiry, holding that "when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *People v. Ayres*, 2017 IL 120071, ¶ 18. The claim "need not be supported by facts or specific examples" because the role of the circuit court is to "conduct an inquiry into the underlying factual basis for the claim." *Id.* ¶ 19. Whether a defendant's submission to the circuit court raised a claim of ineffective assistance of counsel sufficient to warrant a *Krankel* inquiry is a question of law that we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 21 The State's primary argument is that Ms. Martin's complaints were too vague to require any kind of *Krankel* inquiry by the circuit court. Although Ms. Martin did not explicitly state that she was raising a claim of ineffective assistance of counsel, her statements to the court were clearly complaints about counsel's performance based primarily on counsel's failure to even listen to the recording evidence prior to trial and secondarily on alleged interference with her right to a jury trial.

¶ 22 During the colloquy with the trial court, Ms. Martin requested "to file a Marsden trial." In

the state of California, a "*Marsden* hearing" affords a defendant the opportunity to raise issues of ineffective assistance of counsel as a basis for requesting a change of attorney. *People v. Marsden*, 2 Cal. 3d 118, 123-24 (Cal. 1970). This certainly suggests that Ms. Martin was trying to state a claim of ineffective assistance of counsel, although the trial court did not necessarily know the meaning of "*Marsden* trial." Even without the reference to *Marsden*, however, Ms. Martin's request and complaints were sufficient to obligate the court to inquire further. We have recognized that specific criticism of counsel's performance is sufficient to trigger a *Krankel* inquiry. See *Taylor*, 237 Ill. 2d at 76 (discussing cases in which the defendants' posttrial statements complaining of counsel's performance were sufficient to trigger a *Krankel* inquiry). We have also recognized that, while a defendant must make clear to the court that he or she has a problem with their lawyer, a defendant is not required to use the "magic words 'ineffective assistance of counsel' " before the trial court must conduct a *Krankel* inquiry. *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 31. As our supreme court recently made clear in *Ayers*, Ms. Martin's claim did not have to be in writing. *Ayers*, 2017 IL 120071, ¶ 18. Nor did it need to be supported by facts or specific examples. *Id.* ¶ 19. Indeed, in this case the court seemed aware that Ms. Martin was raising some type of ineffectiveness claim as it told her she had "avenues of redress on that," in response to her complaint.

¶ 23 The State does not contend that the court's response to these complaints was sufficient to constitute a preliminary *Krankel* inquiry. An adequate preliminary inquiry under *Krankel* requires " 'the trial court to conduct some type of inquiry into the underlying factual basis, if any, of a defendant's *pro se* posttrial claim of ineffective assistance of counsel.' " (Emphasis omitted.) *Ayres*, 2017 IL 120071, ¶ 19 (quoting *Moore*, 207 Ill. 2d at 79). Such an inquiry may consist of the court asking defense counsel about the defendant's allegations, discussing the

allegations with the defendant, or resolving the motion based on its knowledge of defense counsel's performance and the "insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill. 2d at 78-79. None of this occurred here.

¶ 24 The State argues that any error was harmless because the court addressed Ms. Martin's posttrial motion regarding the audio recording. But the court rejected the posttrial motion on the basis that counsel failed to exercise diligence in obtaining and presenting the audio recording. Rather than supporting any argument for harmless error, this only indicates that Ms. Martin's claim of ineffective assistance might have had some merit.

¶ 25 In short, the court did not inquire into the factual basis of Ms. Martin's claims or make a determination regarding whether the claims potentially had merit as it was required to do under *Krankel*. See *Moore*, 207 Ill. 2d at 77-78. This was error and requires us to remand this case for that inquiry.

¶ 26 IV. CONCLUSION

¶ 27 For these reasons, we remand this cause to the trial court for the limited purpose of allowing the trial court to conduct the required preliminary inquiry into Ms. Martin's claims.

¶ 28 Remanded with instructions.